No. 74-1623

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1975

CHESTER SLONE, ET AL., APPELLANTS

v.

DESKINS BRANCH COAL CO., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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Washington, D.C. 20530.

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The United States submits this memorandum as *amicus curiae* in response to this Court's invitation of October 6, 1975.

1. Prior to 1972, Kentucky's Workmen's Compensation Act provided that a totally disabled worker would be entitled to benefits that could not exceed $63 per week for 425 weeks, and reasonable medical expenses of not more than $3,500. In 1972 the Act was amended; the maximum payment now is $81 per week for life and unlimited necessary medical expenses for any employee injured after January 1, 1973. However, workers eligible for federal compensation programs are not eligible for the higher schedule of benefits. The effect of this exception is that a

claimant eligible for black lung benefits under Title IV of the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 792 *et seq.* (30 U.S.C. (1970 ed. and Supp. III) 901 *et seq.*) is ineligible under state law for the higher schedule of benefits. *Maggard* v. *International Harvester Co.*, 508 S.W.2d 777 (Ky. Ct. App.). Appellants contend that this ineligibility for higher state benefits, caused by their eligibility for federal benefits, denies them the equal protection of the laws.

A three-judge court was convened but abstained from consideration of the issue pending a state court determination of the constitutionality of the state statute. On February 7, 1975, the Kentucky Court of Appeals upheld the constitutionality of the critical section of the 1972 amendments. *Chapman* v. *Eastern Coal Corp.*, 519 S.W.2d 390. The three-judge district court then upheld the state statute, holding that there is "a rational relationship between this statutory scheme and the legitimate state interest which it was intended to serve" (J.S. App. 7a).

2. The decision below presents no substantial federal question. The difference in treatment under the state law arises because Congress has chosen to address black lung disease differently than other occupational diseases. The State has concurred in Congress' judgment.[1] There can be

[1]The difference in treatment will be advantageous to some claimants and disadvantageous to others. Although minimum federal benefits are less than Kentucky's higher benefit schedules, federal payments are increased if a claimant has dependents. 30 U.S.C. (Supp. III) 922(a)(3). The maximum federal payment now is $374.80 per month, or $23.80 more than the maximum payment under the higher schedules of the Kentucky program. The federal benefits, moreover, are increased to match increases in the cost of living; state benefits are not. Finally, a disabled Kentucky claimant is eligible for at least the lower schedule of state benefits whether or not federal benefits are provided; these state benefits are offset against any federal benefits the claimant may be awarded. 30 U.S.C. (Supp. III) 922(b).

no reasonable doubt about the constitutionality of the State's scheme; a State need not address all social ills in an identical fashion. As this Court held in *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489:

> Evils in the same field may be of different dimensions and proportions requiring different remedies. Or so the legislature may think. * * * Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. * * * The legislature may select one phase of one field and apply a remedy there, neglecting the others.

In the instant case the State's decision to treat miners suffering from black lung disease and eligible for federal benefits differently than other disabled workers not so eligible is clearly a matter within the discretion of the legislature. See, *e.g.*, *Weinberger* v. *Salfi*, No. 74-214, decided June 26, 1975; *Jefferson* v. *Hackney*, 406 U.S. 535; *McGowan* v. *Maryland*, 366 U.S. 420; *Lower Vien Coal Co.* v. *Industrial Board*, 255 U.S. 144.

Although the federal government would prefer that Kentucky provide greater benefits to black lung victims—Congress has sought to induce such action by the States[2] — Kentucky's failure to do so does not raise any constitutional question. Since the federal government has chosen to act broadly in this field, the State is entitled to defer to the federal program. This approach is rationally supportable

[2]See 30 U.S.C. (Supp. III) 901, 922(b), 931.

and therefore does not violate the Equal Protection Clause.[3] Appellants' policy arguments to the contrary must be addressed to the Kentucky legislature rather than to the courts. *Jefferson* v. *Hackney*, 406 U.S. 535.

For the foregoing reasons, it is respectfully submitted that the judgment of the district court should be affirmed.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1975.

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[3]The Court need not defer disposition of this case pending its decision in *Dunlop* v. *Turner Elkhorn Mining Co.*, No. 74-1302, probable jurisdiction noted June 9, 1975, and *Turner Elkhorn Mining Co.* v. *Dunlop*, No. 74-1316, probable jurisdiction noted June 9, 1975. *Turner Elkhorn* involves the constitutionality of the federal black lung benefits program. The state program is constitutional whether or not the federal program is constitutional. If the federal program is upheld, the argument in the text of this memorandum demonstrates the constitutionality of the state program. If the federal program should be invalidated, then appellants would be eligible for the higher benefit schedules under state law, and their equal protection argument would be moot. Cf. *Fugate* v. *United States Steel Corp.*, Ky. Ct. App., No. 74-1099, decided May 9, 1975 (claimants will be eligible for higher state benefits once federal program expires); *Wagoner* v. *Swiney*, Ky. Ct. App., No. 75-396, decided October 17, 1975.